IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12754 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGAJI ARJANJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12754 of 2003

MR EE SAIYED for Petitioner No. 1

MR SIKANDER SAIYED for Petitioner No. 1

MS SS PATEL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2003

ORAL JUDGEMENT

1. District Magistrate, Banaskantha District, at Palanpur, passed an order on the 26th June, 2003 in

exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration one prohibition case registered against the petitioner. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Learned advocate appearing for the petitioner, has restricted his arguments to the ground that, so far as the offences are concerned, they relate to bootlegging and there is no disturbance to public order. He submitted that the petition may, therefore, be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. So far as the offences are concerned, they all relate to prohibition cases and in light of decision recorded by Division Bench of this Court in Letters Patent Appeal No.223 of 2000 dated the 22nd August, 2000, in absence of any contemporaneous material, the satisfaction recording damage to public health and disturbance to public order cannot be considered as genuine. The satisfaction, therefore, for exercise of powers under the PASA Act for detaining cannot be considered as genuine and cannot be upheld.

7. In the result, the petition is allowed. The impugned order of detention dated the 26th June, 2003, passed against the detenu, Nagaji Arjanji Thakore, is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

8. Direct service is permitted.

[A.L. DAVE, J.]

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